

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 84996-001

v

U. S. Health and Life Insurance Company
Respondent

Issued and entered
this 13th day of November 2007
by Ken Ross
Acting Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On September 10, 2007, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on September 17, 2007.

The Commissioner notified U.S. Health and Life Insurance Company (USHL) of the external review and requested the information used in making its adverse determination. Information from USHL was received on September 17 and 24, 2007.

The case presented a medical question so the Commissioner assigned it to an independent review organization (IRO) which provided its analysis to the Commissioner on October 15, 2007.

II

FACTUAL BACKGROUND

The Petitioner has group health care coverage with Preferred United Plans which is

underwritten by USHL. She underwent a series of hyperbaric oxygen treatments for her combined branch retinal artery occlusion and central retinal vein occlusion in the left eye and on November 29, November 30, December 4, December 5, and December 6, 2006. When claims for the treatment were submitted, USHL denied coverage saying the services were considered experimental.

The Petitioner appealed. USHL reviewed the claim but upheld its denial. A final adverse determination was issued July 12, 2007.

III ISSUE

Is USHL correct in denying coverage for the Petitioner's hyperbaric oxygen treatment for her retinal occlusion?

IV ANALYSIS

Petitioner's Argument

The Petitioner says that XXXXX, MD, an ophthalmologist and retinal specialist, first diagnosed her retinal occlusion and consulted XXXXX in XXXXX about a course of treatment. Emergency surgery was scheduled with XXXXX but on the recommendation of both doctors hyperbaric oxygen treatment was performed to slow the damage caused by the occlusion before the surgery.

The Petitioner indicates that results from the hyperbaric oxygen treatments were almost immediate and she improved enough that the surgery was cancelled. She believes that because the retinal specialists recommended the treatment and it was successful, USHL should be responsible for the claims for the treatment.

US Health and Life Insurance Company's Argument

USHL asserts that its denial for coverage of the Petitioner's hyperbaric oxygen treatments was correct. The Petitioner's certificate of insurance (the certificate) excludes coverage for

treatments which are considered experimental. The certificate contains these exclusions:

“General exclusions” The calculation of benefits payable under this Policy shall not include or be based upon any charge made for or in connection with any Hospital Confinement, or any examination, or any surgical, medical or other treatment, or any service or supply:

* * *

11. charges for care, treatment, services, and supplies which are not uniformly and professionally endorsed by the general medical community as standard medical care, including care, treatment, services and supplies which are experimental in nature; or

* * *

22. which is Experimental Treatment....

The certificate has this definition of “experimental treatment”:

“Experimental Treatment” shall mean a service, supply or treatment that is deemed experimental or investigational by any technological assessment body established by any state or federal government; or meets one or more of these conditions:

- a. it is within the research, investigational or experimental stage;
- b. it involves the use of a drug or substance that has not been approved by the United States Food and Drug Administration by the issuance of a New Drug Application or other formal approval, or has been labeled “Caution: Limited by Federal Law to Investigational Use”;
- c. it is not of general use by qualified Physicians; or
- d. it is not of demonstrated value for the diagnosis or treatment of a disability.

Following a medical necessity review. USHL concluded: “There is insufficient evidence to determine the health outcome of [hyperbaric oxygen therapy] for retinal artery occlusion, optic neuropathy or glaucoma.” USHL concluded that under the terms and limitations of the certificate, benefits are not available for the hyperbaric oxygen therapy.

Commissioner’s Review

The Commissioner has carefully reviewed the arguments of both parties as well as the documentation and certificate of coverage. In reviewing adverse determinations that involve medical issues or clinical review criteria, the Commissioner requests an analysis from an IRO. The

IRO expert who reviewed this case is board certified in ophthalmology, holds an academic appointment, and has been in practice for more than 10 years. The IRO reviewer determined the hyperbaric oxygen therapy that the Petitioner received was investigational for treatment of her condition.

The IRO's recommendation was summarized in the report:

[A] search of the literature yielded no relevant peer-reviewed studies regarding hyperbaric oxygen therapy for retinal vein treatment. The [IRO reviewer] also explained that the only available studies with some marginal relevance to this issue involved small patient groups and pertained to cystoid macular edema associated with retinal vein occlusion, which [the Petitioner] did not have. The [IRO reviewer] explained that there is no published scientific evidence that shows that hyperbaric oxygen is an effective treatment for retinal ischemia, which was the etiology of [the Petitioner's] blind spot, from a branch retinal artery occlusion. [The IRO reviewer] also explained that although [the Petitioner] did experience some improvement following this treatment, this type of improvement can occur spontaneously with no treatment at all.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner because it is based on extensive expertise and professional judgment. The Commissioner can discern no reason why the IRO recommendation should be rejected in the present case. Therefore, the Commissioner accepts the conclusion of the IRO reviewer and finds that the Petitioner's hyperbaric oxygen treatment was investigational for the treatment of her condition.

V ORDER

The Commissioner upholds US Health and Life Insurance Company's adverse determination of July 12, 2007. USHL is not required to provide coverage for the Petitioner's hyperbaric oxygen treatment.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of

Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Acting Commissioner